

Message Text

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TO AMEMBASSY BUENOS AIRES

C O N F I D E N T I A L STATE 219658

FOLLOWING REPEAT STATE 219658 ACTION SANTIAGO INFO DEA
07 NOV

QUOTE

C O N F I D E N T I A L STATE 219658

E.O. 11652: GDS

TAGS: PINT, SNAR, PFOR, CPRS, CI

SUBJECT: GFT: FUGITIVES

REF: A. SANTIAGO 5195

B. SANTIAGO 5369

1. AFTER CONSIDERING REQUEST TO HIRE EXTRADITION ATTORNEY
IN REFTELS IN LIGHT OF LONG STANDING POLICIES OF USG, TREATY,
AND CHILEAN STATUTORY LAW, JUSTICE DEPARTMENT CRIMINAL
DIVISION, GOVT REGULATIONS SECTION, HAS DECIDED NOT RPT NOT
TO HIRE EXTRADITION ATTORNEY FOR THESE CASES SO LONG AS
THE PROSECUTING ATTORNEY'S OFFICE IS WILLING TO REQUEST
THAT EXTRADITION BE GRANTED IN THESE TRIALS.

2. USG POLICY NOT TO HIRE AN ATTORNEY FOR EXTRADITION
PROCEEDINGS IS BASED ON SEVERAL REASONS: (A) JUSTICE
HAS NEVER BEFORE HIRED SUCH A PRIVATE PROSECUTING ATTORNEY
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IN LATIN AMERICA; (B) SUPERVISING THE WORK OF A FOREIGN

ATTORNEY IS EXTREMELY DIFFICULT. THE ATTORNEY CAN SUBMIT A BILL FOR HIS SERVICES ABOVE THE ORIGINAL ESTIMATE WITHOUT AN ACCOUNTING FOR SPECIFIC HOURS OF WORK; IN SUCH A CASE THE DEPT OF JUSTICE HAS NO CHOICE EXCEPT TO PAY THE BILL OR INCUR THE WRATH OF THE LOCAL GOVERNMENT WITH REGARD FUTURE REQUESTS FOR EXTRADITION; (C) IN THAT THERE IS NO ACCOUNTING OF THE ACTUAL HOURS OF WORK BY THE

EXTRADITION ATTORNEY OR, EVEN IF THERE IS AN ACCOUNTING, THERE IS NO EFFECTIVE WAY TO VERIFY THE HOURS OF WORK BY THE EXTRADITION ATTORNEY, THE JUSTICE DEPT IS CONCERNED THAT THE FEES OF \$4500 TO \$6500 AND MORE MIGHT BE USED FOR PURPOSES WITH WHICH USG CANNOT BE ASSOCIATED, E.G., BRIBES; AND (D) THE DEPT OF JUSTICE DOES NOT HAVE A BUDGET TO PAY FOR SUCH FEES. IN THAT THERE ARE SEVERAL CASES IN THIS INSTANCE, THE TOTAL FEE COULD BE SIZEABLE. THOUGH DEA WASHINGTON HAS OFFERED TO HELP PAY THESE FEES, THE DEPT OF JUSTICE DOES NOT DESIRE TO USE SUCH FUNDS.

3. THE DEPT OF JUSTICE ALSO HESITATES TO RETAIN PRIVATE COUNSEL IN THIS CASE BECAUSE ARTICLE XI OF THE EXTRADITION TREATY WITH CHILE OF 1900 APPEARS TO PRECLUDE THE NECESSITY OF SUCH: QTE THE EXPENSES INCURRED IN THE ARREST, DETENTION, EXAMINATION, AND DELIVERY OF FUGITIVES UNDER THIS TREATY SHALL BE BORNE BY THE STATE IN WHOSE NAME THE EXTRADITION IS SOUGHT: PROVIDED, THAT THE DEMANDING GOVERNMENT SHALL NOT BE COMPELLED TO BEAR ANY EXPENSE FOR THE SERVICES OF SUCH PUBLIC OFFICERS OF THE GOVERNMENT FROM WHICH EXTRADITION IS SOUGHT AS RECEIVE A FIXED SALARY; . . . UNQTE THE DEPT OF STATE, HOWEVER, HAS OPINED THAT THIS QUOTATION DOES NOT OBLIGE THE GOC TO PROVIDE A PROSECUTING ATTORNEY IN THESE CASES.

4. THE DEPT OF JUSTICE ALSO DECLINES TO HIRE A PRIVATE PROSECUTING ATTORNEY IN THESE CASES BECAUSE THE CODE OF CRIMINAL PROCEDURE OF CHILE AS SET FORTH IN THE 1956 EDITION AVAILABLE IN WASHINGTON PROVIDES AT ARTICLE 650 (698) AS FOLLOWS: QTE WHEN THE INVESTIGATION IS CONFIDENTIAL

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FINISHED, THE RECORDS THEREOF SHALL BE TRANSMITTED TO THE PROSECUTING ATTORNEY'S OFFICE, WHICH IN ACCORDANCE WITH THE SAID RECORDS AND WITH TREATIES OR THE PRINCIPLES OF INTERNATIONAL LAW, SHALL REQUEST THAT THE EXTRADITION BE GRANTED OR REFUSED. UNQTE THE DEPT OF JUSTICE BELIEVES THAT IF THE PROSECUTING ATTORNEY IS WILLING TO REQUEST EXTRADITION IN THESE CASES AS PROVIDED IN ARTICLE 650 THEN THERE IS NO GENUINE NECESSITY

OF HIRING PRIVATE COUNSEL. IF ON THE OTHER HAND THE PROSECUTING ATTORNEY'S OFFICE IS NOT WILLING TO SO REQUEST, THEN THE DEPT OF JUSTICE WOULD BE WILLING TO CONSIDER HIRING AN ATTORNEY TO PROSECUTE THESE CASES, THOUGH BOTH JUSTICE AND STATE WONDER IF IN SUCH AN EVENT HIRING A PRIVATE ATTORNEY WOULD BE FEASIBLE AND WORTHWHILE. DEPT OF JUSTICE ALSO POINTS OUT THAT ARTICLE 652 OF THE CODE OF CRIMINAL PROCEDURE PROVIDES THAT QTE IF THE REQUESTING GOVERNMENT HAS MADE SOME

PERSON RESPONSIBLE FOR THE EXTRADITION PROCEDURES, THAT AGENT SHALL BE HEARD FIRST, THEN THE ACCUSED, AND FINALLY THE PROSECUTING ATTORNEY. UNQTE JUSTICE NOTES THAT THIS LANGUAGE IS PERMISSIVE IN NATURE AS TO THE HIRING OF A PRIVATE ATTORNEY BY THE USG AND THAT THE PROSECUTING ATTORNEY IS REQUIRED TO MAKE AN APPEARANCE. WHEN THE PROSECUTING ATTORNEY APPEARS, JUSTICE BELIEVES THAT THE USG'S POSITION ON A LEGAL QUESTION PRESENTED BY THE DEFENDANT COULD BE PRESENTED AT THAT TIME.

5. AS INDICATED EARLIER, JUSTICE DISLIKES THE TERMS OF THE PROPOSED FEES FOR HIRING PRIVATE COUNSEL. IN THAT THESE CASES ARE ALL OF THE SAME NATURE, JUSTICE BELIEVES THAT FEES OF \$4500 TO \$6500 FOR EACH CASE ARE TOO HIGH IN THAT PREPARATION FOR ONE CASE IS ESSENTIALLY PREPARATION FOR ALL OF THESE CASES. MOREOVER, THE MINIMUM FEE OF \$1500 WITH A \$3000 TO \$5000 CONTINGENCY FEE BASED ON WHETHER OR NOT THE PARTICULAR PERSON IS EXTRADITED RAISES QUESTIONS. JUSTICE BELIEVES THAT THE CONTINGENCY OF SUCCESSFUL EXTRADITION IS REALLY IN THE HANDS OF THE COURTS AND OUT OF THE HANDS OF THE PROPOSED PRIVATE COUNSEL. THUS, JUSTICE WONDERS WHY THE PRIVATE ATTORNEY

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WOULD BE WILLING TO RUN SUCH A RISK AND MORE IMPORTANTLY WONDERS AGAIN IF A BRIBE IS NOT A DISTINCT POSSIBILITY.

6. EMBASSY IS REQUESTED TO RESPOND IMMEDIATELY TO EACH POINT IN ABOVE PARAS - TO THE EXTENT THAT YOU CAN - SO THAT DEPT CAN CHECK CORRECTNESS OF ANALYSIS AND CONSIDER ASKING JUSTICE TO RECONSIDER. IF SOME QUESTIONS CANNOT BE ANSWERED QUICKLY, DO SO WITH FOLLOW-UP TELEGRAM LATER.

7. TO DATE DEPT HAS RECEIVED DOCUMENTS FROM JUSTICE FOR THE CASES OF SILVA-LEIVA, BANDERA, AND QUINTEROS. DOCUMENTS ARE BEING TRANSLATED HERE ON FOLLOWING SCHEDULE: SILVA-LEIVA ON NOVEMBER 15, BANDERA ON NOVEMBER 22, AND QUINTEROS ON NOVEMBER 29. DOCUMENTS SHOULD ARRIVE IN

SANTIAGO APPROXIMATELY ONE WEEK AFTER SAID DATES DUE TO
TIME REQUIRED FOR DELIVERY BY POUCH. IF THESE DATES ARE
NOT SATISFACTORY, INFORM DEPT SO THAT DOCUMENTS CAN BE
SENT TO EMBASSY FOR TRANSLATING IN SANTIAGO. RUSH
UNQUOTE KISSINGER

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